IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6902 of 2005
With
SPECIAL CIVIL APPLICATION No. 2094 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANAND RESTAURANT - Petitioner(s)

Versus

JAYANTIBHAI KHODABHAI PARMAR & 1 - Respondent(s)

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Appearance :SCA No. 6902 of 2005
MR.VARUN K.PATEL for Petitioner(s) : 1,
MR TR MISHRA for Respondent(s) : 1 – 2.

SCA No. 2094 of 2005

MR TR MISHRA for Petitioner(s) : 1.

MR.VARUN K.PATEL for Respondent(s) : 1.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/09/2005

ORAL JUDGMENT

1.Special Civil Application No. 6902 of 2005 has been filed by the employer challenging the legality of the

Award dated 2nd November 2004, passed by Labour Court, Ahmedabad. By the impugned Award, the Labour Court was pleased to direct reinstatement of the workman Jayantibhai Khodabhai Parmar with 20% backwages from the date of termination i.e. 11.04.2001 till reinstatement. Special Civil Application No. 2094 of 2005 has been filed by the workman concerned, challenging the same Award to the extent, it withholds the backwages in favour of the workman.

2. In Special Civil Application No. 6902 of 2005, it is the case of the employer that the Labour Court erred in setting aside the termination, which was brought about legally by the employer. The Labour Court in its impugned Award observed that notice pay and retrenchment compensation as required under Section 25F of the Industrial Disputes Act, have been paid. The Labour Court also recorded that the employer has not breached the provisions of Section 25G and 25H of the Industrial Disputes Act. However, the Labour Court observed that the retrenchment of the workman was not justified.

2.1 It may be noted that the workman was engaged as a

cashier. He had challenged his termination on various grounds including the ground that he was being victimised by the employer since he had approached the Court demanding minimum wages from the employer. It was the case of the workman about which there was no serious dispute that there was only one cashier in the restaurant run by the employer.

2.2The Labour Court observed that the workman was working since 9 years before his termination. The Labour Court further observed that the employer had suggested that on account of competition, the work has gone down and it was therefore necessary to terminate the workman according to his seniority. The Labour Court observed that when the case of the workman was pending before the Labour Court and that he had challenged his termination, it was the duty of the employer to justify the termination. The Labour Court further noted that the witness of the employer one Shri Rajeshbhai Popatbhai who was the partner of the firm stated that the termination was brought about on account of poor financial condition, however, he has not elaborated about the condition in his deposition. The Labour Court further observed that the employer produced

certain documents alongwith list Exhibit 17, however, the Court could not take cognizance of such documents only upon production without proof. The Court therefore concluded that the employer failed to establish that the termination was necessary on account of fierce competition. In the result, the Labour Court found that the termination was not justified, directed reinstatement of the workman and provided for payment of 20% backwages. The Labour Court observed that the employer had not made any efforts for getting employment during the intervening period. It may be noted that pursuant to the Award, the workman has been reinstated and is working since about 5 to 6 months from now, as stated by the learned Advocate Shri Mishra.

3. Learned Advocate Mr. Patel appearing for the petitioner-employer submitted that the Award is required to be set aside. He submitted that the employer was facing acute financial problems and the Labour Court erred in interfering with the termination Order.

3.1 Reliance was placed on the decision of the Supreme

Court in the case of **Madhurantakam Coop. Sugar Mills Ltd. Vs. Viswanathan reported in (2005) 3 SCC 193**. In the said decision however, the Hon'ble Supreme Court was pleased to reduce the backwages to 50% considering the financial crisis of the employer.

3.2Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Employers Vs. Union of India reported in Labour Law Journal 2005 page 302**, in which compensation was ordered to be paid to the workman in lieu of reinstatement.

4. Learned Advocate Shri Mishra appearing for the workman submitted that the Award of the Labour Court is just and proper and calls for no interference. He submitted that the employer totally failed to justify the termination. He submitted that the Labour Court was perfectly justified in setting aside the termination. He pointed out that the workman had raised a demand for payment of wages as per the Minimum Wages Act. Such demand was pending when the workman was terminated. He was the only one to be terminated from the entire establishment, which employed several persons. He also pointed out that admittedly, there was only one cashier

working in the restaurant.

5. Considering the rival submissions and having perused the material on record, it appears that when the demand of the workman was pending before the appropriate Court for being paid salary at the rate of minimum wages, his service came to be terminated. He challenged the termination contending that it amounted to victimisation. The workman was the only person to be selected for termination. Witness of the employer Shri Rajeshbhai Popatlal, who was also the partner of the firm, in his cross-examination admitted that recovery case filed by the workman was pending since 1997. He admitted that the workman alongwith other employees had filed a complaint under the provisions of Minimum Wages Act due to which, an inspector had visited his premises. He also admitted that there was no other cashier working in the restaurant.

5.1 In view of the above evidence on record, when the Labour Court came to the conclusion that the employer has failed to justify the termination, I do not see any reason for interference with such a conclusion. Though, certain documents were produced before the Labour Court after the evidence of Shri Rajeshbhai Popatlal was

recorded, the Labour Court records that such documents were not proved. The Labour Court therefore correctly did not advert to such documents. Considering the overall situation viz. that the present workman was the only person sought to be terminated, that he was the only person discharging duties as a cashier, that establishment still continues to operate, that the workman had raised demands for receiving salary at the minimum wages prescribed and that there was no other cashier engaged before or after the termination of the workman, I do not find that the Labour Court committed the any jurisdictional error in coming to the conclusion that the termination of the workman was not justified. Especially when the Labour Court found that the documents produced by the employer were not proved, I see no scope for interference in the conclusion of the Labour Court.

6. With respect to the backwages, however, it may be noted that the Labour Court has observed that the workman did not make sufficient efforts to look for alternative employment. Even otherwise, it is difficult to appreciate that an experienced cashier gets no work at all during the period of his forced layoff. The

workman had received the retrenchment compensation and other benefits paid by the employer. Considering all these aspects of the matter, I find that the direction for payment of 20% backwages is required to be set aside. In the result, Special Civil Application No. 6902 of 2005 is allowed in part. Direction for reinstatement of the workman is upheld. Direction for payment of backwages is set aside.

7. In view of the above discussions, Special Civil Application No. 2094 of 2005 is required to be and is hereby rejected.

8. Rule is made absolute to the above extent in Special Civil Application No. 6902 of 2005. Rule is discharged in Special Civil Application No. 2094 of 2005.

(Akil Kureshi, J.)

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